

REMARKS

Reconsideration and withdrawal of the rejection and the allowance of all claims now pending in the above-identified patent application (*i.e.*, Claims 9-19) are respectfully requested in view of the foregoing amendments and the following remarks.

At the outset, it should be recognized that the present invention, as now most broadly claimed, provides an apparatus for assisting in training players of golf, which includes a platform having first and second coplanar foot support members located on the platform, in which the first coplanar foot support member is fixed in position on the platform, while the second coplanar foot support member is laterally and linearly movable on the platform relative to the first coplanar foot support member. Biasing means urge the second coplanar foot support to be adjacent the first coplanar foot support member, absent an externally applied force that causes the second coplanar foot support member to not be adjacent the first coplanar foot support member. The primary purpose, or intended use of the claimed invention, is to assist a golfer in controlling and stabilizing his or her body movement for seeking to attain a controlled and consistent golf swing.

As will be explained in greater detail hereinafter, nowhere in the prior art is such a novel and effective apparatus for assisting in training players of golf, which includes a platform having first and second coplanar foot support members located on the platform, in which the first coplanar foot support member is fixed in position on the platform, while the second coplanar foot support member is laterally and, preferably, linearly movable on the platform relative to the first coplanar foot support member, either disclosed or

suggested.

By the present amendments, Applicant has amended independent Claim 9 (and Claims 10-16 via dependency) to now recite the limitation that the second coplanar foot support member is both laterally and linearly movable on the platform of the invention relative to the first coplanar foot support member. Subject matter support for the newly-entered amendment of independent Claim 9 exists in Applicant's originally-filed *Specification* at Page 5, lines 6-13 ("The platform (4) is a *rectangular* frame with the dimensions of the frame being equivalent to that of the three platform members (1, 2, 3) when they are placed horizontally adjacent to each other [with] the outside edge of the platform members [being] *in line with the edge of the frame* of the platform (4).") (emphasis added)); and FIG. 2.

Applicant has also taken this opportunity to add new Claims 17-19 to the patent application. In the latest Office Action, the Examiner indicated that the subject matter of dependent Claims 14-16, prior to the instant claim amendments, was allowable over the prior art, and would be allowed if presented in independent form. Consequently, Claims 17-19 present the subject matter of Claims 14-16 – without the lateral and "linearly" movable limitation – that the Examiner indicated to be allowable over the prior art.

Applicant therefore respectfully submits that Claims 17-19 are in condition for allowance at this time.

Accompanying the present *Amendment in Response to the Final Office Action*,

Applicant is filing a *Request for Continued Examination* and remitting the required *RCE* filing fee. Accordingly, the “finality” of the last Office Action should be withdrawn and the foregoing amendments presented herein entered, and considered on their merits, as a matter of right.

Turning now, in detail, to an analysis of the Examiner’s prior art rejection, in the latest Office Action the Examiner has now rejected Claims 9-13 as being anticipated, pursuant to 35 U.S.C. §102(b), by Scriver, U.S. Patent No. 2,455,274. It is the Examiner’s contention that Scriver discloses an apparatus having a platform, a first coplanar foot support, a second coplanar foot support and means for biasing, as claimed by Applicant prior to the present amendment of Claim 9. The Examiner has stated, and Applicant agrees, that the intended use of the claimed invention, if structurally readable on the prior art – so as to anticipate the prior art – is not entitled to patentable weight as a basis for otherwise avoiding an anticipatory reference.

In reply to the Examiner’s anticipation rejection applying Scriver, the applied citation discloses a “ski trainer and exerciser” that is intended to allow a person to mimic the foot movements of a skier. As best shown in FIGS. 15 and 16 of Scriver, the foot supports in the cited reference are not “linearly” movable, in contrast to the present invention, as now claimed, and Scriver can therefore no longer be viewed as anticipating Applicant’s presently claimed invention.

Furthermore, while the mere recitation of an “intended use” would not otherwise allow a claimed article or apparatus to avoid an anticipation rejection over a reference

otherwise disclosing all structural elements, an intended use is properly considered when rendering a determination on patentability when the apparatus claim presented can no longer be viewed as being anticipated by the prior art. *See, In re Chu*, 66 F.3d 292, 36 USPQ2d 1089, 1095 (Fed. Cir. 1995), *citing In re Gal*, 980 F.2d 717, 25 USPQ2d 1076 (Fed. Cir. 1992) (“finding of ‘obvious design choice’ precluded where the claimed structure and *function it performs* are different from the prior art” (emphasis added)); Rosenberg, Peter D., *Patent Law Fundamentals* §9.04 at 9-45 (2nd Ed. 1993) (“Where the claimed structure is simple and/or differs slightly from the prior art, the inquiry may focus upon the utility or result effected.”))

The ski trainer and exerciser apparatus disclosed by Sriver, which provides for non-linear lateral foot support member movements, would not be useful for allowing a person to engage in the practice of golf, and, in this regard, it respectfully contended that the present invention, as now broadly recited in independent Claim 9, cannot fairly be viewed as being either anticipated by, or obvious over, the closest prior art as represented by Sriver.

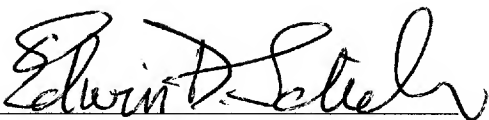
In light of the foregoing, it is respectfully submitted that the Examiner’s 35 U.S.C. §102(b) anticipation rejection of the latest Office Action, as applicable against independent Claim 9, which has now been amended, has been overcome and it is respectfully requested that the issued prior art rejection be withdrawn.

In view of the foregoing, it is respectfully contended that all claims now pending in the above-identified patent application (*i.e.*, Claims 9-19) recite a novel and effective

apparatus for assisting in training players of golf, which includes a platform having first and second coplanar foot support members located on the platform, in which the first coplanar foot support member is fixed in position on the platform, while the second coplanar foot support member is laterally, and preferably linearly, movable on the platform relative to the first coplanar foot support member, which is patentably distinguishable over the prior art. Accordingly, withdrawal of the outstanding rejection and the allowance of all claims now pending are respectfully requested and earnestly solicited.

Respectfully submitted,

VERN McMILLAN

By 
Edwin D. Schindler
Attorney for Applicant
Reg. No. 31,459

PTO Customer No. 60333

Five Hirsch Avenue
P. O. Box 966
Coram, New York 11727-0966

(631)474-5373

October 23, 2008

Enc.: 1. *Request for Continued Examination*; and,
2. EFT for \$405.00 (*RCE Filing Fee*).

The Commissioner for Patents is hereby authorized to charge the Deposit Account of Applicant's Attorney (*Account No. 19-0450*) for any fees or costs pertaining to the prosecution of the above-identified patent application, but which have not otherwise been provided for.